

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street


Philadelphia, Pennsylvania 19103-2029

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2012 MAY -3 PM 5: 25

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

SUBJECT: In re City of Newport News
Docket No. CWA-03-2011-0162

FROM: Jon Capacasa (3WP20) 
Director, Water Protection Division

TO: Shawn Garvin (3RA00)
Regional Administrator, Region III

NATURE OF THE CASE

The attached Consent Agreement/Final Order resolves a violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, resulting from the City of Newport News' ("Newport News" or "Respondent") violation of its NPDES MS4 Permit. On April 10, 2001, the Virginia Department of Environmental Quality (VADEQ) issued Newport News a NPDES MS4 Discharge Permit No. VA0088641 ("Permit"). VADEQ subsequently administratively extended the Permit.

On June 14 and 15, 2010, EPA conducted a compliance inspection of the Respondent's MS4. EPA determined that Respondent failed to implement numerous requirements of its Permit, which include: failure to minimize discharges of pollutants into the MS4 system; failure to perform required inspections; failure to implement and maintain structural best management practices to reduce pollutants in storm water runoff from construction sites; inadequate training; and inadequate funding leading to substantive permit violations such as those identified above.

As a result of the above violations, EPA issued an administrative Complaint to Respondent on September 27, 2011. The Administrative Complaint proposed a penalty in the amount of \$155,000. This matter is being resolved for a total cash penalty in the amount of \$80,000.

I recommend that you execute the Final Order, as settlement of this matter, under the terms of the CAFO, without a hearing, is in the best interest of the Agency.

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BEFORE THE UNITED STATES
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EPA REGION III, PHILA. PA

In The Matter of: : Proceeding to Assess a Class II
City of Newport News, VA : Administrative Penalty Under
: Section 309(g) of the Clean Water Act
: **Docket No. CWA-03-2011-0162**
Respondent :
: CONSENT AGREEMENT AND
: FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order ("CAFO") is entered into by the Director of the Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and the City of Newport News, Virginia ("Respondent"), pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of the alleged violations of the Clean Water Act by Respondent.

II. EPA'S FINDINGS OF FACT

1. The Complainant initiated this proceeding for assessment of a Class II Administrative Penalty pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), by issuing an Administrative Penalty Complaint ("Complaint") to Respondent on September 27, 2011.
2. This Consent Agreement incorporates by reference Paragraphs 4, 6, 13-15, 22, 23, 26, 30, 34 and 42-44 of the Complaint, and adopts them as the EPA's Findings of Fact herein.

III. EPA'S CONCLUSIONS OF LAW

3. This Consent Agreement incorporates by reference Paragraphs 3, 4, 5, 7-14, 17-25, 27-29, 31-33, 35-48 of the Complaint and adopts them as EPA's Conclusions of Law herein.
4. EPA concludes that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and is liable to the United States for a civil penalty in accordance with Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. GENERAL PROVISIONS

5. For the purpose of the proceeding:
 - A. Respondent admits to the jurisdictional allegations of the Complaint;
 - B. Respondent neither admits nor denies the specific factual allegations set forth in the Complaint;
 - C. Respondent consents to the assessment of the civil penalty set forth herein;
 - D. Respondent agrees to undertake all actions required by this Consent Agreement;
 - E. Respondent hereby expressly waives its right to contest the allegations set forth in the Complaint at a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B);
 - F. Respondent waives its right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).
6. Each party to this agreement shall pay its own costs and attorney's fees.
7. This CAFO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 of the CWA, 33 U.S.C. § 1342 or any other law. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.
8. This Consent Agreement and the accompanying Final Order resolves the civil claims against the Respondent for the specific violations alleged in the Complaint issued in the above-captioned action. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its effective date.

9. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
10. This CAFO may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.
11. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO or one or more of its terms and conditions is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. PENALTY

12. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty in the amount of \$80,000.00 in full and complete settlement of EPA's civil claims as set forth in the Complaint alleging violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

VI. PAYMENT TERMS

13. Within thirty (30) days of the effective date of this Order, Respondent shall pay the civil penalty of Eighty Thousand dollars (\$80,000.00) in the following manner:
 - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CWA-03-2011-0162;
 - B. All checks shall be made payable to "United States Treasury";
 - C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197 9000

Contact: Heather Russell 513-487-2044

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL MO C2 GL
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS NWD
26 W. M.L. King Drive
Cincinnati, OH 45268 0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301 887 6548 or REX, 1 866 234 5681

H. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

J. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to the following:

U.S. Environmental Protection Agency
Regional Hearing Clerk (3RC00)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

Mr. Charles Schadel
Enforcement Officer
U.S. Environmental Protection Agency
Region III (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Andrew Duchovnay
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

14. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be

assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge, not to exceed six percent, will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

VII. EFFECTIVE DATE

This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

RESPONDENT:

CITY OF NEWPORT NEWS, VIRGINIA

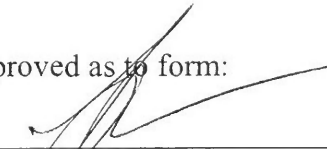


NEIL A. MORGAN, City Manager

Date

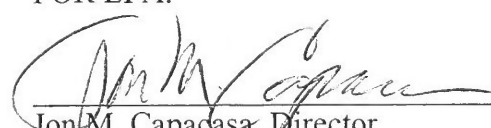
4/10/12

Approved as to form:



Joseph M. DuRant
Deputy City Attorney

FOR EPA:



Jon M. Capadusa, Director
Water Protection Division
Environmental Protection Agency
Region III

Date

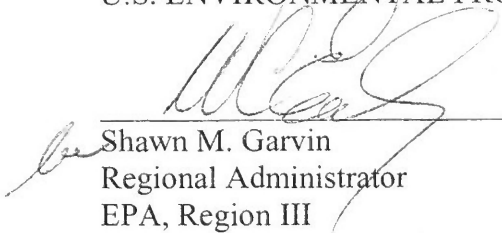
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FINAL ORDER

Pursuant to Sections 301 and 309(g) of the Clean Water Act, 33 U.S.C. §§ 1311 and 1319(g), and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are ordered to comply with the terms of the referenced Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/1/12


Shawn M. Garvin
Regional Administrator
EPA, Region III